

STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

**Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Wednesday, March 9, 2011**

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 6367, An Act Concerning the Failure of a Witness to Report a Serious Crime

Raised House Bill No. 6539, An Act Concerning Sentence Modification

The proposal, as I understand it, will create a new crime of failure to report a serious crime. It appears that this would be similar to the current criminal offenses of Criminal liability for acts of another (C.G.S. § 53a-8); Conspiracy (C.G.S. § 53a-48); and Criminal attempt (C.G.S. § 53a-49). The significant difference being that this new offense, failure to report a serious crime, would be classified as an A misdemeanor, rather than facing the penalty associated with the actual crime that is not being reported as one would if charged under the aforementioned statutes. The new offense would only apply to the unreported crimes of murder, assault, sexual assault or physical abuse of a child, and includes the attempt of such crimes.

The Office of the Victim Advocate (OVA), although understanding the impetus of this proposal, is concerned with the unintended consequences this proposal may have to certain populations. Often, many domestic violence victims struggle with abuse for years before having the courage to break free. For some of those domestic violence victims who have children, the strength to leave is born, if and when, the abuse turns toward the child. For others, however, the strength may never come. The unintended consequence of this proposal would expose domestic violence victims and their children with arrest. For instance, if a victim of domestic violence, too afraid to report the abuse of a child "as soon as reasonably practicable" or, likewise, a child to frightened, fails to report the abuse of their parent. Additionally, domestic violence victims routinely become the subject of investigation by the Department of Children & Families (DCF) as a result of a domestic violence incident. In order for domestic violence victims to fully participate with the DCF and law enforcement, there must not be the looming threat of an arrest for the failure to report a crime. There are a myriad of reasons a victim may not report a crime, too many to list here. Arresting a victim only compounds the problem. Additionally, by arresting the victim, the state is actually not resolving the issue of failure to report. For the arrested victim, by virtue of the arrest, now has a 5th amendment right not to testify. Any testimony offered by the victim, will surely lead back to self incrimination at some point. Furthermore, any distrust the victim had had against the state and its ability to protect the victim from the abuser, is now compounded.

Further, domestic violence victims will become more isolated as the limited resources, support and assistance the victim may have access to will likely be unavailable to the victim if this proposal were to pass. Resources such as domestic violence support groups; trusted friends or family; and local community resources, such as faith based organizations, all would potentially have

the ability and responsibility in some cases to notify the authorities if the victim makes a disclosure regarding abuse. This proposal is a step backwards, not only in our effort's of ending domestic violence, but may very well have the opposite affect of its intended purpose and silent victims of domestic violence and their children. Egregious cases of unreported incidents of abuse can be addressed with the use of the statutes referenced above. Victims and children of domestic violence need support and services; not more intimidation and criticism for being a victim of domestic violence. The solution is to find ways to assist victims of domestic violence to come forward to report abuse and feel safe and supported in doing so. Arresting victims simply does not get us there.

Subsection (b) of the proposal seeks to establish an affirmative defense for those arrested for the failure to report a crime. This is problematic. Consider the following example: Imagine a case involving two siblings who are sexually assaulted by a family member and neither reports the crime against the other. The proposal, as written, creates serious implications for the victims. First, the siblings could be arrested for failure to report a crime and since there are no age identifiers or time periods in the language, it is unclear when the siblings would be subjected to arrest. Considering what we know today about incest and that sexual abuse usually occurs over a period of time, the ramifications for this legislation are staggering. Additionally, despite the claim that an affirmative defense is available, victims or witnesses subjected to this legislation would be prohibited from the use of the affirmative defense claim within subsection (b) due their Fifth Amendment right as defendants against self incrimination. The arrest of the victims would do nothing to provide viable evidence of the crime and allow the state to prosecute the offender for all potential testimonial evidence would be excluded, barred by the witnesses' Fifth Amendment right. Rather, the arrest of the victims would cement in the minds of sexual assault victims that silence is best, a dangerous step in the wrong direction.

Moreover, the OVA understands the frustration within the law enforcement community to effectively investigate crimes and the public's apparent lack of cooperation in many of these investigations. The lack of cooperation by the community has compounded law enforcement's efforts to solve many serious crimes. The problem, however, is not necessarily that the public is not interested in assisting law enforcement, rather, the public does not feel safe in doing so. There are many inner city neighborhoods where the residents of those neighborhoods are exposed to threats of violence for cooperating with law enforcement. "Snitches get stitches" tee-shirts are paraded throughout neighborhoods. The answer is not to criminalize that fear. Once again, targeting laws to complex issues will not bring about the intended result. The individuals who are arrested under this proposal, will, once again, have a 5th Amendment right to not incriminate themselves. Further, the distrust of the "system", which is the impetus of why many do not cooperate with law enforcement investigations, will only become compounded. The solution is to address the communities distrust and find ways, again, to make those communities come forward in a manner in which they feel safe and supported. This same argument can be applied to sexual assault victims who are aware or witness victims of the same offender. The lists of negative ramifications are endless. I strongly urge the Committee to reject Raised House Bill No. 6367.

Regarding Raised House Bill No. 6539, the OVA strongly opposes this proposal. Sentence modification is an important tool available for defendants who want to challenge their sentence claiming that other offenders, with similar facts and circumstances, have received a less harsh sentence. Current law provides for a review in cases where a definite sentence of three years or less has been imposed or, with approval of the state's attorney, in cases where a definite sentence of more than three years has been imposed. Therefore there is already a viable process that allows a defendant to have their sentence reviewed and, if appropriate, modified. The proposal would allow

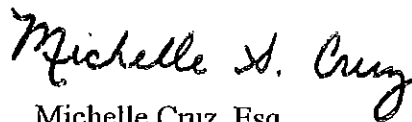
for the review of *any* definite sentence imposed and would eliminate the need for approval of the state's attorney prior to the review of sentences involving more serious crimes. This proposal will undoubtedly create chaos within the Judicial Branch and open the flood gates for every sentence to be reviewed, even when the sentence was reasonable and the result of a knowing and voluntary plea agreement.

More than 95% of criminal matters are resolved in Connecticut through the plea bargain process. This process requires a knowing and voluntary agreement by the defendant to plead guilty to some of the offenses charged, or a substitution of lesser charges, in exchange for a more favorable sentence. Defendants do not have to accept a plea bargain to resolve a criminal matter. Many defendants take a plea bargain to take advantage of the state's plea offer rather than risk exposure to a trial, possible guilty to all charges and a harsher sentence. This proposal allows an offender to again seek further modification through sentence review, even if the original sentence was reasonable and, even when the defendant had a plea to lesser included offenses. The proposal will ultimately require a review of every sentence imposed, even those reached by agreement.

Additionally, for crime victims, the end result is the criminal justice process, which can take years prior to a disposition, is elongated further. Crime victims wait years for justice, hoping the offender will be sentenced for the crime, only to find out the offender is requesting sentence modification, habeas review and/or parole. I strongly urge the Committee to reject Raised House Bill No. 6539.

Thank you for consideration of my testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Michelle H. Cruz". The signature is written in a cursive, flowing style.

Michelle Cruz, Esq.
State Victim Advocate

